

STATE OF MICHIGAN
COURT OF APPEALS

KIMBERLY RAE GILDERSLEEVE,

Plaintiff-Appellee,

V

COREY JOSEPH GILDERSLEEVE,

Defendant-Appellant.

UNPUBLISHED

December 18, 2003

No. 242604

Lenawee Circuit Court

LC No. 01-023626-DM

Before: Wilder, P.J., and Griffin and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting sole physical custody of the parties' son to plaintiff. We affirm.

Defendant first argues the trial court erred in its determination that granting physical custody of their son to plaintiff would be in the child's best interest. In a child custody case, this Court reviews the trial court's findings of fact under the great weight of the evidence standard, the court's discretionary rulings for an abuse of discretion, and questions of law for clear error. MCL 722.28; *McCain v McCain*, 229 Mich App 123, 125; 580 NW2d 485 (1998). On appeal, all custody determinations must be affirmed unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. *Harvey v Harvey*, 257 Mich App 278, 283; 668 NW2d 187 (2003). In reviewing the trial court's findings, this Court should defer to the trial court's determination of credibility. *Mogle v Schriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000).

Before a court determines the child's best interest, the court must decide whether an established custodial environment existed. *Mogle, supra* at 197. A custodial environment is established if it is one of significant duration "in which the relationship between the custodian and child is marked by qualities of security, stability and permanence." *Baker v Baker*, 411 Mich 567, 578-579; 309 NW2d 532 (1981). The trial court must make a specific finding regarding the existence of a custodial environment. *Jack v Jack*, 239 Mich App 668, 670; 610 NW2d 231 (2000). If the court fails to do so, this Court will remand for a specific finding. *Id.*

The trial court held the established custodial environment was with plaintiff. The court found that throughout her son's life, plaintiff had been the person who was always there for him. Because the court's finding of an established custodial environment with plaintiff was not against the great weight of the evidence, there was no error in this regard.

MCL 722.23 contains the criteria used to determine a child's best interest in a custody case. The trial court found that factors (a), (b), (c), (f), and (g) weighed equally with respect to both parties, and factors (d) and (j) weighed in favor of plaintiff. The court did not make any factual findings for factors (e), (h), (i), (k), or (l). Defendant contends that the trial court evaluated factors (b), (c), (d), (e), (g), (j), and (l) incorrectly.

The court found that factor (b), "[t]he capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed if any," favored plaintiff and defendant equally. The court found that plaintiff, although not raised in the church, appeared sincere in her faith. The record reflects plaintiff's voluntary conversion to Catholicism when she married defendant and her continued faithfulness to that church.

The court found that factor (c), "[t]he capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs," favored plaintiff and defendant equally. Where, as here, the evidence supported the trial court's finding, there was no error.

The court found that factor (d), "[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity," weighed in favor of plaintiff. The record reflected that since the separation, their son had been living with plaintiff. Because their son resided with plaintiff and only visited defendant once a week and on alternate Thursdays and weekends, the trial court's finding was not against the great weight of the evidence.

The court made no findings regarding factor (e), "[t]he permanence, as a family unit, of the existing or proposed custodial home or homes," or factor (g), "[t]he mental and physical health of the parties involved." Generally, the trial court must consider and explicitly state its findings and conclusions regarding each best-interest factor; failure to do so may be error requiring reversal. *LaFleche v Ybarra*, 242 Mich App 692, 700; 619 NW2d 738 (2000). However, a trial court is neither required to address every fact in evidence or voice its conclusion concerning every argument presented, *id.*, nor is it required to declare an acceptance or a rejection of every proposition argued. *Fletcher v Fletcher*, 447 Mich 871, 873; 526 NW2d 889 (1994).

The court found that factor (j), "[t]he willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents," weighed in favor of plaintiff. The court pointed out instances in the record where plaintiff had attempted to foster a relationship between defendant and their son and instances where defendant had interfered with the corresponding relationship between plaintiff and the parties' son. Therefore, the trial court's decision was not against the great weight of the evidence.

The court examined factor (i), "[t]he reasonable preference of the child, if the court considers the child to be of sufficient age to express preference," and found that their son at two-and-a-half-years-old was unable to express a preference. As a result, the court's finding was not against the great weight of the evidence. The court also noted there was nothing to be considered under factor (l), "[a]ny other factor considered by the court to be relevant to a particular child

custody dispute.” Although defendant claims the court should have considered the close relationship with his family under this factor, the court adequately considered these facts under different factors. Because a court need not comment on every argument presented, there was no error. *Lafleche, supra* at 700.

Defendant next argues the trial court abused its discretion regarding the proper disposition of the marital assets because the court failed to make specific findings of fact. This Court reviews a trial court’s findings of fact for clear error. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). A trial court’s findings are clearly erroneous when, after conducting a thorough review of the record, this Court is convinced that the trial court made a mistake. *Id.* This Court reviews dispositional rulings to determine whether the trial court reached a fair and equitable result in light of the circumstances. *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992).

The goal in distributing marital assets in a divorce proceeding, absent a binding agreement, is to reach an equitable distribution of property in light of all the circumstances. *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). Although the division of marital assets need not be mathematically equal, it must be congruent, and the trial court must clearly explain any significant departure. *Id.* In reaching an equitable division, the trial court should consider the duration of marriage, each party’s contribution to the marital estate, earning ability, age, station in life, health and needs, fault or past misconduct, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996). The trial court must make specific findings regarding the factors it determines to be relevant. *Id.* Reviewing the relevant factors, the trial court found them generally equal.

Regarding the property, defendant did not contest that during the marriage the parties paid off defendant’s credit card debt of \$6,000. Therefore, the trial court ordered defendant to pay plaintiff \$3,000. Defendant kept the bedroom furniture that was purchased during the marriage. The court ordered defendant to pay plaintiff \$1,500. The court also reviewed the debt of \$1,700 the parties accumulated during the marriage and ordered defendant to pay \$850.

The court also found defendant kept the stereo and television that was bought during the marriage on plaintiff’s credit card and ordered defendant to reimburse plaintiff \$1,500. And last, the court examined plaintiff’s pension payback obligation of \$3,356.88, and ordered defendant to pay plaintiff \$1,678.44 – half of her obligation. Because the trial court’s result was fair and equitable, there was no error.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard Allen Griffin
/s/ Jessica R. Cooper